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Abstract

## The application of the court of justice in crimes less than murder in the Islamic Jurisprudence

## Ibrahim Muhammed Hassan Alhosani

## Mu'tah University, 2012

This research studies the court of justice as a way agreed upon by the strictly traditional law of Islam to assess the crimes that have no fixed punishment.

The study clarifies the rule of the crimes whose punishment is assessed by the court of justice according to the Islamic law and the way it was assessed in the past and today, it shows the concept of the court of justice in the light of the judicial applications in modern state, it is an organization of specialized expert entrusted to assess the recompenses, the victim of the crime deserves for the harms he suffered due to a crime the law has not mentioned its punishment or recompense.

The research has an introduction and three chapters:

The introduction contains the theoretical aspect of the study: its importance, objectives and the reasons for choosing the topic.

Chapter one includes the explanation of the related terms and the values of blood money and the recompenses for wounds and injuries.

Chapter two deals with the legislation of the court of justice, its conditions and how it assess.

Chapter three mentions the applications of the court of justice and the rules and the ways of compensation for wounds and injuries.

﴿ وَلَقَدْ كُرَّمْنَا بَنِيَ عَادَمَ وَحَمَلْنَاهُمْ فِي الْمَارِ وَالْفَدْ كُرَّمْنَا بَنِيَ عَادَمَ وَحَمَلْنَاهُمْ فِي الْمَرِ وَالْبَرِ وَالْبَحْرِ وَرَزَقَنَاهُم مِّنَ الطَّيِبَاتِ وَفَضَّلَانُهُمْ عَلَى كَثِيرٍ مِّمَّنْ خَلَقْنَا تَفْضِيلًا ﴾ (1)

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<sup>(1)</sup>( ) <sup>(2)</sup>( (3) ﴿ وَلَا تَعْتَدُونَا ۚ إِنَّ ٱللَّهَ لَا يُحِبُّ ٱلْمُعْتَدِينَ ﴾ (4) <sup>(5)</sup>( ( (1) 894 : .632 1993 1 1 (2) 972 : 1 : ( 1996 .119 8 1416 (3) .677 (4) .(190) (5) 884 :

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﴿ وَمَا كَانَ لِمُؤْمِنِ أَن يَقَتُلَ مُؤْمِنًا إِلَّا خَطَّاً وَمَن قَنَلَ مُؤْمِنًا خَطَّاً وَمَن قَنَلَ مُؤْمِنًا خَطَّا فَعَدْرِيرُ رَقَبَةٍ مُّؤْمِنَةٍ وَدِيَةٌ مُسَلَّمَةُ إِلَى آهَ لِهِ إِلَّا أَن يَصَكَدَقُوا فَإِن كَانَ مِن قَوْمٍ عَدُوِّ لَكُمُ وَهُو مُؤْمِنَةٍ مُوالِيةٍ مُؤْمِنَةٍ وَإِن كَانَ مِن قَوْمٍ بَيْنَكُمُ وَبَيْنَهُم مِيثَقُ فَدِيةٌ وَهُو مُؤْمِنَةٍ مُؤْمِنَةٍ وَإِن كَانَ مِن قَوْمٍ بَيْنَكُمُ وَبَيْنَهُم مِيثَقُ فَدِيةٌ مُسَلَّمَةُ إِلَى آهَ لِهِ وَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ وَإِن كَانَ مِن قَوْمٍ بَيْنَكُمُ وَبَيْنَهُم مِيثَقُ فَدِيةٌ مُسَلَّمَةُ إِلَى آهَ لِهِ وَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ فَوَان كَانَ مِن قَوْمٍ بَيْنَكُمُ مَا يَعْمَلُ اللهُ عَلَيْهُ مَن لَمْ يَجِدُ فَصِيامُ شَهْرَيْنِ مُتَتَابِعَيْنِ مُنَالِّهُ وَكَانَ اللّهُ عَلِيمًا حَكِيمًا اللهُ إِلَى اللّهُ وَكَانَ اللّهُ عَلِيمًا حَكِيمًا الله اللهُ اللهُ اللهُ عَلَيْهُ مَا اللّهُ عَلِيمًا حَكِيمًا اللهُ اللهُ اللهُ اللّهُ اللهُ اللّهُ عَلِيمًا حَكِيمًا اللهُ اللهُ اللّهُ اللهُ اللهُ اللهُ اللهُ اللهُ اللهُ اللهُ اللهُ اللّهُ اللهُ اللهُ اللّهُ اللهُ اللهُ اللهُ اللّهُ اللهُ اللهُ اللّهُ اللهُ المُلْعُلِي اللهُ اللهُ اللهُ الل

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﴿ وَكُنْبَنَا عَلَيْهِمْ فِيهَآ أَنَّ ٱلنَّفْسَ بِٱلنَّفْسِ وَٱلْعَيْنِ وَٱلْأَنْفَ بِٱلْأَنْفَ بِٱلْأَذُنُ وَٱلسِّنَّ بِٱلسِّنِّ وَٱلْجُرُوحَ قِصَاصٌ فَمَن تَصَدَّقَ بِهِ عَهُوَ كَفَّارَةٌ لَّهُ وَمَن لَّمْ يَعَكُم بِمَا أَنزَلَ ٱللَّهُ فَأُوْلَنَمِكَ هُمُ ٱلظَّالِمُونَ ﴾ (2) .(3)(( (1) .43 13 (2).(45) (3) )

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:﴿ وَلَقَدْ كُرَّمْنَا بَنِيٓ ءَادَمَ وَحَمَلْنَاهُمْ فِي ٱلْبَرِ وَٱلْبَحْرِ وَرَزَقْنَاهُم فِي ٱلْبَرِ وَٱلْبَحْرِ وَرَزَقْنَاهُم فِي اللَّهِ وَٱلْبَحْرِ وَرَزَقْنَاهُم فِي اللَّهِمْ فِي ٱلْبَرِ وَٱلْبَحْرِ وَرَزَقْنَاهُم فِي اللَّهِمْ عَلَى كَثِيرٍ مِّمَّنْ خَلَقْنَا تَفْضِيلًا ﴿ (1)

﴿ وَلَا نَقْتُلُواْ ٱلنَّفْسَ ٱلَّتِي حَرَّمَ ٱللَّهُ إِلَّا وَلَا نَقْتُلُواْ ٱلنَّفْسَ ٱلَّتِي حَرَّمَ ٱللَّهُ إِلَّا فِالْمَعِقِّ وَمَن قُلِلَ مَظْلُومًا فَقَدْ جَعَلَنَا لِوَلِيِّهِ عَسُلُطَنَا فَلَا يُسْرِف فِي ٱلْقَتْلِ إِنَّهُ كَانَ مَنصُورًا ﴾ (()

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: ﴿ يَتَأَيُّهُا ٱلَّذِينَ ءَامَنُواْ
                                            كُنِبَ عَلَيْكُمُ ٱلْقِصَاصُ فِي ٱلْقَنْلَيِّ ٱلْحُرُّ بِٱلْحُرُّ وَٱلْعَبْدُ بِٱلْعَبَدِ وَٱلْأَنْثَى بِٱلْأَنثَىٰ }
قوله تعالى: ﴿ وَمَن يَقْتُلُ مُؤْمِنًا أُمَّتَعَمِّدًا فَجَزَآؤُهُ جَهَنَّدُ خَلِدًا فِيهَا
                                                            وعَضِبَ ٱللَّهُ عَلَيْهِ وَلَعَنَهُ، وَأَعَدَّ لَهُ عَذَابًا عَظِيمًا (17) ﴿ (2)
                                                           (3)
                                                                               (4)
                                                                              (5)
                              (6)
: ﴿ وَلَا تَقَ نُكُواْ ٱلنَّفْسَ ٱلَّتِي حَرَّمَ
                                                               ٱللَّهُ إِلَّا بِٱلْحَقِّ ۚ ذَٰلِكُمْ وَصَّنكُم بِهِ عَلَكُمُ نَعْقِلُونَ ﴾ (7)
   ) :
                                                                                                                   ) :
                                                                                                                         :(
                                                                                                                                 (1)
                                                                                     .(178)
                                                                                                                                 (2)
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                                                                            .59
                                                                                          26
                                                                                                                                  (7)
                                                                                     .(151)
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<sup>(1)</sup>(

(3) (2) )) (4)

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.304 10 (2)

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<sup>(1)</sup>.(( (2)

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﴿ وَٱلْأَنْعَامَ خَلَقَهَا ۖ لَكُمَّ

.(8-5)

· :

: ﴿ مَنْ عَمِلَ صَالِحًا مِّن ذَكَرٍ أَوْ أَنْثَى وَهُو مُؤْمِنُ فَلَنُحْمِينَّهُ، حَيَوْةً طَيِّبَةً وَلَنَجْزِينَّهُمْ ()

الجَرَهُم بِأَحْسَنِ مَاكَانُواْ يَعْمَلُونَ ﴾ (1)

- ((

)) (2)<sub>((</sub> -

<sup>(3)</sup>.((

(07) (1)

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: ﴿ وَلَا تَبْخَسُوا ٱلنَّاسَ أَشْبَآءَهُمْ وَلَا تَعْثَوْا فِ ٱلْأَرْضِ
                                                                                 مُفْسِدِينَ ﴾ (1)
: )):
                               <sup>(2)</sup>((
                       ))
                            (3).((
                                  ))
                                                                        <sup>(4)</sup>.((
                                                                                             (1)
                                                                   .85:
                                                                                             (2)
           2227:
    4
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<sup>(1)</sup>(( )) : ﴿ وَإِذَا مَرِضْتُ فَهُو يَشْفِينِ ﴾. (2) (3) )) <sup>(4)</sup>(( )) -1 -2 -3 (1) 751: 3: .128 1998 1419 5: 4 (2) :08 (3) ): ( .336 4 1448: (4) 970 : .33 8 2 8:

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## ﴿ وَالْجُرُوحَ قِصَاصٌ ﴾ (1) : ﴿ رَبَّنَا لَا تُؤَاخِذُنَآ إِن نَسِينَآ أَوْ أَخْطَأَنَا ﴾ (2)

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(5)<sub>.</sub>

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<sup>(4)</sup>(

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4: 1993 1413 : .333 1

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))

## ﴿ فَسَّنَكُوا أَهْلَ ٱلذِّكِرِ إِن كُنتُمْ لَا تَعْلَمُونَ ﴾)). (2)

(3)

2- ﴿ يَآأَيُّهَا ٱلَّذِينَ ءَامَنُواْ لَا نَقْنُلُواْ ٱلصَّيْدَ وَأَنتُمْ حُرُمٌ ۗ وَمَن قَنَلَهُ مِنكُم مُّتَعَمِّدًا فَخَرَآءُ مِنْ مُ مَا قَنَلَ مِن ٱلنَّعَمِ يَعَكُمُ بِهِ عِدْ وَاعَدْلِ مِنكُمْ ﴾ (4)

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72

## ﴿ وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَأَبْعَثُواْ حَكَمًا مِّنْ أَهْلِهِ، وَحَكَمًا مِّنْ أَهْلِهَا إِن يُرِيداً إِصْلَحًا يُوفِقِ ٱللَّهُ بَيْنَهُمآ ۖ إِنَّ ٱللَّهَ كَانَ عَلِيمًا خَبِيرًا ﴾ (1)

(2).

﴿ وَإِذَا حَكَمْتُم بَيْنَ ٱلنَّاسِ أَن تَحَكُّمُواْ

.291

بِٱلْعَدُلِ ۚ ﴾ (3) : ﴿ قُلُ أَمَرَ رَبِّي بِٱلْقِسْطِ ۗ ﴾ (4)

﴿ إِنَّ ٱللَّهَ يَأْمُرُ بِٱلْعَدُلِ ﴾

(6).

(1) .35:

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(4) .29:

(5) .90:

(6) .31 1

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-1 )) <sup>(1)</sup>(( (2) (3). -2 )) : <sup>(4)</sup>(( (1) 6771-6770: 68 12 5 .1459: 296 (2) .293 9 (3) 536: .177 1988 3: 2 (4) 3 1481: 433 1392: .43 8

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<sup>(2)</sup>((

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· <sup>(3)</sup>((

13: 857: <sup>(1)</sup>

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.**289** 7 3905: 751 : (3)

.208 3 - 4:

-1 (1). -2 (2). 3.7.2 : ﴿ وَلَا يُنْبِئُكَ مِثْلُ خَبِيرٍ ﴾ (1) .429 1 1415 2 .17 1994 (2) 14-13-12 2006/4/13-12-11 . 1427 .15 41 : (3) .14:

76

﴿ وَكَيْفَ تَصْبِرُ عَلَىٰ مَا لَوْ يَجُطُ بِهِ عَنْهَا ﴾ (1) (3). (2) <sup>(4)</sup>( ﴿ إِنَّ ٱللَّهُ عَلِيمٌ خَبِيرٌ ﴾ (5) (6). (1) .68: (2) .407 (3) 1306 1 .43 (4) .15 41 (5) .34: (6) 1205:

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<sup>(1)</sup>. -4

(2)

: ﴿ يَثَأَيُّهَا ٱلَّذِينَ ءَامَنُواْ لَا نَقَنُلُواْ ٱلصَّيْدَ وَأَنتُمْ حُرُمٌ ۗ وَمَن قَنَلَهُ،

مِنكُم مُّتَعَيِّدًا فَجَزَآةً مِّثْلُ مَا قَنَلَ مِنَ ٱلنَّعَمِ يَحْكُمُ بِهِ عَذُوا عَدْلِ مِّنكُمْ ﴾

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الْقَدْ خَلَقْنَا اللَّهُ اللّ

ٱلْإِنسَانَ فِيَ أَحْسَنِ تَقُوِيمِ ﴾ (2) (3)

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) <sup>(1)</sup>.( (3) (2) (4) (7) (6) (5) (8) (10) (9) (12) (13)(11)(14) (1) .611 565 9 (2) .414 4 (3) .396 7 (4) . 602 9 (5) .477 10 (6) .52 4 (7) . 589 588 (8) .409 4 (9) .477 10 (10) 4 .414 (11)

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: ﴿ لَّيْسَ عَلَى ٱلْأَعْمَىٰ حَرَّجٌ وَلَا عَلَى ٱلْأَعْرَجِ حَرَجٌ ﴾. (7)

(8) (11) (10) (9)

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·...<u>www.lawjo.net/vb/attachment.php?attachmentid=536&d</u>
.<sub>2011/11/25:</sub>

: ﴿ فَمَنِ ٱعْتَدَىٰ عَلَيْكُمْ فَأَعْتَدُواْ عَلَيْهِ بِمِثْلِ مَا ٱعْتَدَىٰ عَلَيْكُمْ ﴿ (1) ﴿ وَجَزَرُوا سَيِّئةٍ سَيِّئةً مِّثْلُهَا ﴾ : ﴿ وَإِنَّ عَاقَبُ تُمَّ فَعَاقِبُواْ بِمِثْلِ مَا عُوقِبُ ثُم بِهِ ﴾ (4) : ﴿ وَدَاوُرِدَ وَسُلَيْمَنَ إِذْ يَعَكُمَانِ فِي ٱلْخَرُثِ إِذْ نَفَشَتْ فِيهِ غَنَمُ ٱلْقَوْمِ وَكُنَّا لِعُكْمِهِمْ شَهِدِينَ ﴾ (5) -(6) .194: (1) .40: (2) (3) .126: (4) 251 3 .463 462 12 (5) .78: (6) 14 .234

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1	- ﴿ وَلَقَدْ كُرَّمْنَا بَنِيَ ءَادَمَ وَحَمَلْنَاهُمْ فِي ﴾
7	- ﴿ وَٱتَّقُواْ يَوْمًا لَّا تَجَرِّى نَفْشَ عَن نَفْسٍ شَيْعًا ﴾
14	- ﴿ وَلَا تَعَـٰ تَدُوٓاً إِنَ ٱللَّهَ لَا يُحِبُّ ٱلْمُعَـٰ تَدِينَ ﴾
18	- ﴿ وَمَا كَانَ لِمُؤْمِنٍ أَن يَقْتُلَ مُؤْمِنًا إِلَّا خَطَئًا ﴾
23	- ﴿ وَإِن كَانَ مِن قَوْمِ بَيْنَكُمْ وَبَيْنَهُم مِّيثَقُ فَدِيَةٌ مُّسَلَّمَةُ ﴾
29	- ﴿ وَكُنَبْنَا عَلَيْهِمْ فِيهَآ أَنَّ ٱلنَّفْسَ بِٱلنَّفْسِ وَٱلْعَيْنِ بِالْعَـيْنِ ﴾
40	- ﴿ يَتَأَيُّهَا ٱلَّذِينَ ءَامَنُوا كُنِبَ عَلَيْكُمُ ٱلْقِصَاصُ فِي ٱلْقَنْلَيِّ
40	﴿ وَمَن يَقْتُلُ مُؤْمِنَا مُتَعَمِّدًا فَجَزَآؤُهُ جَهَنَّمُ خَلِدًا فِيهَا
40	- ﴿ وَلَا تَقَ نُلُواْ ٱلنَّفْسَ ٱلَّتِي حَرَّمَ ٱللَّهُ إِلَّا بِٱلْحَقِّ ۚ ﴾
46-45	- ﴿ وَٱلْأَنَّعَامَ خَلَقَهَا ۗ لَكُمْ فِيهَا دِفْءٌ وَمَنَافِعُ وَمِنْهَا تَأْكُلُونَ ۞ ﴾
47	- ﴿ مَنْ عَمِلَ صَلِحًا مِّن ذَكَرٍ أَوْ أُنثَى وَهُوَ مُؤْمِنُ فَلَنُحْيِينَا هُو حَيَاوَةً طَيِّبَةً ﴾
48	- ﴿ وَلَا تَبْخَسُوا ٱلنَّاسَ أَشْيَاءَهُمْ وَلَا تَعْثَوْاْ فِ ٱلْأَرْضِ مُفْسِدِينَ ﴾
51	- ﴿ وَإِذَا مَرِضْتُ فَهُوَ يَشَّفِينِ ﴾
57	- ﴿ وَٱلْجُرُوحَ قِصَاصٌ ﴾
57	- ﴿ رَبَّنَا لَا تُؤَاخِذُنَآ إِن نَسِينَآ أَوْ أَخْطَأْنَا ﴾
72	- ﴿ فَسَّنَاكُواْ أَهْلَ ٱلذِّكِرِ إِن كُنتُهُ لَا تَعْلَمُونَ ﴾
72	- ﴿ يَتَأَيُّهَا ٱلَّذِينَ ءَامَنُواْ لَا نَقَنْلُواْ ٱلصَّيْدَ وَأَنتُمْ حُرُمٌ ۚ ﴾
73	- ﴿ وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَأَبْعَثُواْ حَكَمًا مِّنْ أَهْلِهِ ـ وَحَكَمًا ﴾
73	- ﴿ وَإِذَا حَكَمْتُم بَيْنَ ٱلنَّاسِ أَن تَحَكُّمُواْ بِٱلْعَدُّلِ ۚ ﴾

73	- ﴿ إِنَّ ٱللَّهَ يَأْمُرُ بِٱلْعَدُلِ ﴾
73	- ﴿ قُلْ أَمَرَ رَبِّي بِٱلْقِسْطِ ۗ ﴾
76	- ﴿ وَلَا يُنَبِّئُكَ مِثْلُ خَبِيرِ ﴾
77	- ﴿ وَكَيْفَ نَصْبِرُ عَلَىٰ مَا لَوْ تَجُطْ بِهِ ۦ خُبْرًا ﴾
77	- ﴿ إِنَّ ٱللَّهَ عَلِيدٌ خَبِيرًا ﴾
82	- ﴿ يَكَأَيُّهَا ٱلَّذِينَ ءَامَنُواْ لَا نَقَنُلُواْ ٱلصَّيْدَ وَأَنتُمْ حُرُمٌ أَنَّ ﴾
86	- ﴿ لَقَدْ خَلَقْنَا ٱلْإِنسَانَ فِي ٓ أَحْسَنِ تَقُوِيمِ ﴾
100	- ﴿ لِّيْسَ عَلَى ٱلْأَعْمَىٰ حَرَجٌ وَلَا عَلَى ٱلْأَعْرَجِ حَرَجٌ ﴾
110	- ﴿ فَمَنِ ٱعْتَدَىٰ عَلَيْكُمْ فَٱعْتَدُواْ عَلَيْهِ بِمِثْلِ مَا ٱعْتَدَىٰ عَلَيْكُمْ ﴾
110	- ﴿ وَجَزَرَوُّا سَيِّئَةٍ سَيِّئَةُ مِثْلُهَا ﴾
110	- ﴿ وَإِنْ عَاقَبُتُمْ فَعَاقِبُواْ بِمِثْلِ مَا عُوقِبُتُم بِهِ ۦ ﴾
110	- ﴿ وَدَاوُدَ وَسُلَيْمَنَ إِذْ يَحَكُمَانِ فِي ٱلْحَرُثِ إِذْ نَفَشَتْ فِيهِ غَنَمُ ٱلْقَوْمِ ﴾

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